

**Quarterly Report**  
**OF THE**  
**ATTORNEY GENERAL**  
**OF**  
**ALABAMA**



**FOR THE PERIOD**  
**FROM OCTOBER 1, 1971**  
**THROUGH DECEMBER 31, 1971**

**VOLUME 145**

**WILLIAM J. BAXLEY, Attorney General**

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MONTGOMERY, ALABAMA

**Q U A R T E R L Y   R E P O R T**

**of the**

**ATTORNEY GENERAL**

**of**

**A L A B A M A**

**For the Period**

**From October 1, 1971**

**Through December 31, 1971**

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**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF  
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from October 1, 1971, through December 31, 1971, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State, and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

**WILLIAM J. BAXLEY**

**Attorney General**

WILLIAM J. BAXLEY  
Attorney General

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# OPINIONS



October 4, 1971

Honorable Thomas R. Allison

Investigator in Charge

Alcohol, Tobacco and Firearms

Internal Revenue Service

Post Office Box 1466

Montgomery, Alabama

Criminal Law—Courts—Firearms.

Person convicted of Bank Larceny may not possess pistol.

Opinion by Assistant Attorney General Turner.

Dear Mr. Allison:

I have your request for an opinion wherein you ask: (1) Is the charge of "Bank Larceny" (Federal Code) considered a crime of violence? and (2) Is Thaggard prohibited by Title 14, Section 174(a), Code of Alabama 1940, from possessing a pistol?

The Thaggard, to whom you refer, is T. L. Thaggard of Montgomery, who was convicted in Federal court of bank larceny.

Title 14, Section 172, Code of Alabama 1940, states "... 'crime of violence' means any of the following crimes, or an attempt to commit any of them, namely, . . . larceny."

Therefore, your first question is answered in the affirmative.

Title 14, Section 174, states, "No person who has been convicted in this state or elsewhere of committing or attempting to commit a crime of violence shall own a pistol or have one in his possession or under his control."

Accordingly, your second question is, likewise, answered in the affirmative.

Sincerely

**WILLIAM J. BAXLEY**  
Attorney General

October 4, 1971

Honorable LeRoy Brown, Superintendent

State Department of Education

State Office Building

Montgomery, Alabama 36104

Schools—State Superintendent of Education—Taxation.

State statute which cuts off state funds if no local support added is unconstitutional.

Opinion by Assistant Attorney General Madison.

Dear Dr. Brown:

Your request for an opinion, dated September 27, 1971, is as follows:

"Section 1 of Act No. 33, Special Session, 1969, states the following:

"'In order for the public schools of a county, including the independent cities herein, to share in the apportionment of the minimum program fund, in addition to meeting all the prerequisites prescribed by law or rule or regulation of the state board of education, beginning with the school year 1971-72 the county or the independent city, as the case may be, shall also provide for the year for which aid is requested at least a required minimum of local participation in the cost of operating the schools in the area.' It states further: 'If the average of the participation by a county and the independent cities therein does not come up to the required minimum of local participation, then such county and the independent cities therein shall not be entitled to share in the minimum program fund.'

"There is no way to determine if a county, including the cities therein, have come up to the required minimum of local participation for a given year until the financial reports have been received after the close of the fiscal year.

"We should like to have the following questions answered:

"1. Is Act 33, Special Session, 1969, an operable law?

"2. If it is an operable law, when should the money for a county and the cities therein be cut off if they are not meeting the minimum requirements?"

By postscript on your letter, I am advised that there are thirty-nine counties and the cities therein that would receive no funds from the State under said Act No. 33.

According to a formula set forth in the Act, the Commissioner of Revenue of the Department of Revenue determines the State average of local participation per student in average daily attendance in the system or systems in each county of the State, and also determines the amount of local support as defined in the Act and reports such to the State Board of Education. Those reported with the necessary local support get State funds; the others do not.

The State support goes to the counties on a monthly basis. The Commissioner of Revenue by letter attached has stated that due to the



way school funds are collected at the local level with ad valorem taxes being collected in the months of October, November, and December which would inflate in those months the local funds available for educational purposes, there is no way to determine accurately whether a county is meeting the local effort as called for in the Act for the current year.

I express no opinion at this time on whether or not reasonable judgment estimates of per month local support by the Commissioner of Revenue will meet the statutory requirements for my opinion now expressed renders such unnecessary.

There is now no constitutional duty to operate a public school system in Alabama. The school systems are operated under statutory authority. Where such a school system is maintained by the State, it is clear enough that it must do so evenhandedly. The schooling must be made available to all on equal terms. **Hall v. St. Helena Parish School Board**, 197 F. Supp. 649, aff'd 368 U. S. 515, 7 L. Ed. 2d 521.

As stated in **James v. Almond**, 170 F. Supp. 331:

"Where a state or local government undertakes to provide public schools, it has the obligation to furnish such education to all in the class eligible therefor on an equal basis. . . . All eligible children must be accorded equal treatment with respect to admission or attendance in public schools. . . ."

I am informed that thirty-nine counties in Alabama have failed after exhausting all reasonable means of raising the necessary funds to meet the local effort required by Act No. 33. They therefore will lose State financial support, thereby resulting in the closing of the schools. In these counties no schooling will exist, while in the counties able to meet the local effort requirements, schools will operate.

There is no provision in the Act in any place providing for cases where it is impossible to meet the Act's requirement as to local effort; regardless of reasons, those counties lose State support under the terms of the Act. The Act contains no due process provisions for a hearing before State funds are denied.

It is my opinion therefore that Act No. 33, supra, as applied, results in a denial of the due process and equal protection of the laws under the Fourteenth Amendment to the United States Constitution.

The school children themselves are not at fault. A statute such as here considered, which results in the education of children in some counties but denies the same type of education to children in other counties, is patently unconstitutional and void in its application.

It is my opinion therefore that State funds may not be denied under Act No. 33 to those counties who have in good faith failed in their efforts to meet the local effort provisions of the Act.

It may be very desirable from the State's standpoint to obtain as much local effort as possible but it must not do so under conditions and laws which provide public education for school children in counties able to provide the necessary local effort, while denying the same education to children in the counties unable to do so.

Generally, this answers both of your questions.

Cordially yours,

WILLIAM J. BAXLEY  
Attorney General

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October 7, 1971

Honorable Henry B. Gray III

Administrator, Alabama Alcoholic Beverage Control Board

Administrative Building

Montgomery, Alabama 36102

Taxation—Alabama Alcoholic Beverage Control Board.

Three percent license tax is based on total amount of gross sales.

Opinion by Assistant Attorney General Livingston.

Dear Mr. Gray:

In your request dated October 1, 1971, you ask whether or not the supplemental duty of 10% ad valorem imposed by the Presidential Proclamation effective August 16, 1971 on dutiable articles imported into the United States should be included, if passed on to the State ABC Board by vendors, in the total selling price of alcoholic liquors for the purpose of computing the 3% license tax levied on distributors by Act No. 589, Acts of Alabama 1963, page 1285.

The license tax levied by Act No. 589, supra, is in an amount equal to 3% of the vendor's total gross sales of alcoholic liquors to the State of Alabama during the preceding year.

The 10% supplemental duty imposed by the Proclamation is as follows:

"(2) Such proclamations are suspended only insofar as is required to assess a surcharge in the form of a supplemental duty amounting to 10 percent ad valorem. Such supplemental duty shall be imposed on all dutiable articles imported into the customs territory of the United States from outside thereof, which are entered, or withdrawn from warehouse, for consumption after 12:01 a.m., August 16, 1971, . . . "

A statement issued by the United States Treasury gave the following example: If an item is imported prior to the effective date of the Proclamation at \$100 with a 5% duty, the cost to the importer would have been \$105. Say, the goods sell for \$130. With the additional levy (10% of \$100 equals \$10), the goods would cost the importer \$115 who may sell it for \$140.

In a memorandum to Control State Officials dated August 31, 1971, the National Alcoholic Beverage Control Association, Inc., stated as follows:

"In the meantime, the following guide lines in question-and-answer form are based on officially declared policies for implementation of the current freeze period:

**"Q. Can a State add the 10 percent import surcharge to its prices?**

**"A. Yes.**

**"Q. Can a vendor absorb the import surcharge rather than pass it on?**

**"A. Yes."**

This leads me to the conclusion that the 10% import surcharge is not required to be passed on and collected by the vendor from his purchaser. This being so, it is not a "consumer levy" similar to the state sales tax levy.

In view of the above, it appears that the supplemental duty attaches the moment the goods are imported and thereafter the amount of the duty becomes another item of overhead to the importer and a part of the selling price if the economic burden of the duty is passed on the ultimate purchaser.

With respect to the 10% duty levy on imported alcoholic liquors, it is my opinion that the vendor cannot collect the duty **as such** from the State of Alabama. It may become a part of the vendor's selling price to the State of Alabama, thereby passing the economic burden of the duty on to the State. This may be done regardless of how the invoice to the State is made out, whether the duty is included in one charge or stated separately. The vendor cannot place the duty levy on the State by any method of bookkeeping or invoices. The same legal principle was involved in an official opinion of this office dated August 17, 1971 dealing with the rental tax levied by Act No. 96, Special Session 1971. A copy of that opinion is attached.

Therefore, it is my opinion that the 3% license tax levied by Act No. 589, *supra*, should be based on the total amount of gross sales of alcoholic liquors to the State during the preceding calendar year even

though an amount equal to the supplemental 10% duty surcharge is included in the sales price by the vendor to the State of Alabama.

Very truly yours,

WILLIAM J. BAXLEY  
Attorney General

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October 8, 1971

Honorable Levi Watkins, President

Alabama State University

Montgomery, Alabama 36101

Schools—Colleges and Universities—Alabama State University.

Alabama State University Foundation is not a state agency.

Opinion by Assistant Attorney General Madison.

Dear Dr. Watkins:

I have your letter of October 4, 1971, in which you ask my opinion on the following questions:

"1. Is the Alabama State University Foundation an agency of the State of Alabama and/or Alabama State University?"

"2. If the Foundation is in fact an agency of either the State or the University or both, what legal grounds support this conclusion?"

"3. What are the legal obligations of the voting trustees who are not employees of the State and University and who constitute a possible voting majority of five to two?"

"4. If the Foundation is in fact an agency of the University and/or State, what action should the University take respecting gifts received from donors who were unknowingly led to believe otherwise?"

The articles of incorporation of the Alabama State University Foundation state that it is a private corporation formed under the laws of Alabama as a nonprofit organization.

The purposes for which the Foundation is formed are the support of an educational undertaking; namely, Alabama State University. It is provided that for this purpose the Foundation holds in trust any property given, devised, or bequeathed, or in any other way made over to the Foundation for the exclusive use and benefit of Alabama State University or any student or professor therein or any

department thereof or for carrying on at said University any line of work, teaching, or investigation which the donor, grantor, or testator, may designate.

Article XI of the articles of incorporation provides for an audit by a certified public accountant selected by the Board of Trustees.

There are no facts before me indicating that such corporation was formed at the request of the State Board of Education or that it was instrumental in causing its creation.

It is my opinion therefore that your questions are answered in order as follows:

1. No.
2. Unnecessary to answer because of negative answer to 1 above.
3. It is impossible to define the legal obligations of voting trustees who are not employees of the State and University except to say that they must act in good faith to carry out the purposes of the corporation in accordance with the articles of incorporation. The obligations cannot be stated in the absence of knowledge of what is before them.
4. Unnecessary to answer because of negative answer to 1 above.

I have considered the opinion in Quarterly Report of Attorney General, Volume 76, page 63, with reference to certain corporation formed for Alabama Polytechnic Institute, but am of the opinion that this present corporation does not come within the reasoning of that opinion.

Cordially yours,

WILLIAM J. BAXLEY  
Attorney General

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October 13, 1971

Honorable Price M. Bryant

Tax Collector Morgan County

Decatur, Alabama 35601

Taxation—Ad Valorem Tax—Tax Collectors—Tax Assessors.

Nature of "personal charge" of ad valorem tax lien discussed.

Opinion by Assistant Attorney General Payne.

Dear Mr. Bryant:

This will acknowledge your letter of September 27, 1971, requesting opinion of this office. The letter reads as follows:

"Section 203 Title 51 Alabama Revenue code states. 'No property shall be exempt from levy and sale for payment of taxes and fees and charges lawfully incurred in assessing and collecting taxes against the owner thereof.'

"Please give me an opinion on the following:

"Mr. X owned several pieces of property in the city of Decatur as of October 1, 1968 creating a lien against his property and a personal obligation for his 1969 taxes in the amount of \$2,771.00. Some time during the 1969 tax year (after October 1, 1968) the Decatur Housing authority condemned certain parcels of Mr. X's property. Decatur Housing authority is a non tax paying Corporation. One tract of land described by metes & bounds which we will refer to as Church street property was valued as one tract by the tax assessor for the 1969 taxes; therefore the tax collector had no authority to fix a value on any portion of the tract. Included in the condemnation proceedings was a portion of the Church St. property which was for keeps and a portion was made only for the purpose of using same to demolish the buildings thereon. The title of this parcel reverted back to Mr. X after the buildings were removed.

"On December 29, 1969 Mr. X paid with his check \$2,006.00 of the original charge of \$2,771.00 leaving a balance of \$765.00. On his receipt for this payment was written this notation; 'All of receipt #17403 except the land and buildings the city of Decatur and the Housing Authority has bought.'

"Later it was learned that Mr. X had been charged with \$547.50 in error for which proper credit was given leaving a new balance of \$217.50. In settling with the different areas for 1969 taxes, I, as tax collector, took credit for this balance of tax as tax in litigation, because the condemnation proceedings were in court at the time I had to make final settlement. I filed my claim with the court at the proper time. When the judge wrote his decree for the disbursement of the funds, he through an over-sight omitted my tax claim which I am yet carrying as tax in litigation. Because of the oversight Mr. X was given the tax money which would have been paid to me as tax collector had the oversight not occurred. Mr. X. refuses to pay the tax charged as a balance of his 1969 tax.

"Question one: May I as tax collector sell the portion of land reverted back to Mr. X for the \$217.50?

"Question two: If this portion referred to in question one seems insufficient to pay the \$217.50 may I sell any tract of land owned now by Mr. X to collect the 1969 balance due?

"Question Three: If answer to question one or two is in the affirmative, shall I sell the property from the 1969 tax assess-

ment or shall I make an escape assessment against him and mail him a copy and start sale proceedings from there?

"An early opinion will be appreciated."

A. "The law is framed *ex industria*, so as to allow nothing to escape from subjection to the payment of the public revenue, without which there can be no regular organized government." *Solomon v. Willis, Tax Collector*, 89 Ala. 596, 7 So. 160. Here, it may be said that revenue is to the State "As the air is to a bird or the sea to a fish . . ." Section 884, Title 51, Code of Alabama 1940, is further indicative of the legislative intent to assure the State that all taxes assessable *ad valorem* may be forthcoming. The Section, in part, is as follows:

"From and after the first day of October of each year, when property becomes assessable the state shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him . . . **which lien shall continue until such taxes are paid, . . .**" (Emphasis supplied)

It is to be remembered, that the Court in the *Solomon* case, *supra*, was interpreting the forerunner of what is now Section 203, Title 51, *supra*, which section is set out by you in your letter.

Great care has been taken by the Legislature in providing procedure in the collection of all *ad valorem* taxes due by the citizen. Section 53, Title 51, *supra*, requires the tax **assessor** to see to it that property is assessed that has escaped taxation; the duty is also placed on the tax **collector** to report any taxes that have escaped assessment and to call this to the attention of the tax assessor as provided in Section 220, Title 51, *supra*. The collector must use all sources open to him to collect all taxes legally due including garnishment (Section 204, Title 51) and to levy on personal property. See Biennial Report of Attorney General 1934-36, p. 461.

B. October 1, of any given year, is the tax day or law day in the assessment of *ad valorem* taxes in Alabama. Assessment as of that date imposes a **lien** on the property of the citizen assessed and a **personal liability** against the owner of that property for the amount of the assessment. The Court restated the law in this regard in *State v. Alabama Educational Foundation*, 231 Ala. 11, 163 So. 527, thusly:

"Tax upon property is not only a personal charge against the taxpayer (citations omitted), but it must be paid by the one who owns the property at the beginning of the tax year, who is personally bound to pay it, **whatever may occur as to its ownership thereafter or its physical status.**

\* \* \* \*

"Ownership on October 1st is the circumstance which fixes a liability for the succeeding year's assessment, though it may not then be assessed." (Emphasis supplied)

It is of no moment what may occur with reference to the property on and after October 1, as disclosed above—even though the property (improvements, buildings, etc.) may be destroyed on the tax day, October 1. In **United States v. State of Alabama**, 313 U.S. 274, 61 S. Ct. 1011, the Court declared:

“We make no exception of the tract conveyed to the United States on the tax day, October 1, 1936, as we think the state statute, as contended by the State, is to be deemed effective from the **moment** the tax day began. See *Beck v. Johnson*, 235 Ala. 323, 324, 179 So. 225.”

Condemnation proceedings would not affect liability for ad valorem taxes assessed against the property as of October 1 of any given year; in your case the tax day would be October 1, 1968.

Considering what has been set out and discussed above, your questions are answered in the following manner:

“Question one” is answered in the affirmative. In addition to that which is stated in your letter, you tell me over the telephone that the “land reverted” was expressly deleted from the condemnation proceedings and used only as a means of ingress and egress in demolishing the buildings. The sum of \$217.50 represents the balance due on the original assessment of \$2,771.00, after allowing certain credits as shown in your letter.

“Question two” is answered in the affirmative. See paragraph A. and B.

“Question Three” is answered in the affirmative. The balance due on the assessment (\$217.50) is for the 1969 assessment which you now hold. That assessment would be the basis for any action that may be necessary to make the balance of the tax. There is no escape assessment involved for the tax year 1969, as your letter indicates all of the property of Mr. X was assessed for that year, and, you advised over the telephone that all of Mr. X's property **was assessed**. It is reasonable to assume that delay in payment of the entire tax on time was occasioned by the condemnation proceedings.

Very truly yours,

**WILLIAM J. BAXLEY**  
Attorney General

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October 13, 1971

Honorable Robert M. Field

City Attorney

City of Anniston



Post Office Box 670

Anniston, Alabama 36201

Municipalities—Bonds—Funds—Motor Vehicles.

Parking authority is mere agency of city.

Opinion by Assistant Attorney General Gish.

Dear Mr. Field:

Reference is made to your request of September 28, 1971, for an opinion of this office to which is attached a copy of a recently enacted local statute governing the establishment and operation of off-street parking facilities within the City of Anniston.

Your first question is whether revenue bonds issued pursuant to the provisions of said statute will constitute a debt of the City of Anniston within the meaning of the Constitution of Alabama 1901, Section 225, as amended.

In answer to this question, you are advised that such a bond issue to acquire property and establish parking facilities will not create a debt of the City of Anniston within the meaning of said constitutional provision since such bonds are payable solely from the revenue derived from the operation of the parking facilities. However, you are further advised that a bond issue to create parking facilities upon property already owned by the City of Anniston will create a debt of said City within the meaning of Section 225, as amended, *supra*. See **Opinion Of The Justices**, 252 Ala. 583, 42 So. 2d 348.

Your request states that the governing body of your City has appointed a parking authority under the provisions of the statute here considered.

You ask whether said parking authority is a legal entity separate and apart from the City.

This question is answered in the negative. The appointment of the parking authority is authorized by Section 10 of the statute here considered. Neither said Section 10 nor any provision of said statute authorizes the creation of the parking authority as a public corporation. Therefore, the parking authority is a mere department or agency of the City of Anniston having that authority delegated to it by the municipal governing body in accordance with the provisions of said Section 10.

Your last question concerns the power of your municipal governing body to abolish said parking authority.

Since, as pointed out hereinabove, the parking authority is merely a department or agency of the City of Anniston, I am of the opinion

that it may be abolished by the governing body of said City at any time.

Very truly yours,

**WILLIAM J. BAXLEY**  
Attorney General

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October 21, 1971

Honorable John E. Adams

County Attorney

Clarke County

Grove Hill, Alabama 36451

Counties—Sheriffs Salaries.

County may authorize sheriff under Act 1170 to employ additional deputies.

Opinion by Assistant Attorney General Clark.

Dear Mr. Adams:

This will acknowledge your request of September 28, 1971, as to whether the county governing body of Clarke County, Alabama, can legally authorize the sheriff to employ deputies other than a chief deputy and two special deputies with salaries to be fixed by the governing body and paid out of the county treasury under Act No. 1170.

Some delay has been caused by the fact that a lawsuit was pending testing the constitutionality of Act No. 1170 of the 1969 General Session of the Legislature. The Circuit Court of St. Clair County, Alabama, ruled Act No. 1170 constitutional with the exception of Sections 1 and 2 thereof. It is my understanding that the Association of County Commissioners plan to appeal the decree.

The question posed by you concerns Section 3 of Act No. 1170 and would not be disturbed by an appeal. Therefore, it appears that your question has been answered in the affirmative by an earlier opinion of this office dated January 15, 1971, to Hon. E. W. Enslen, Chairman, Elmore County Commission, a copy of which is attached hereto. I am also sending a copy of the decree of St. Clair County Circuit Court for your information.

Yours very truly,

**WILLIAM J. BAXLEY**  
Attorney General

October 29, 1971

Honorable Richard Dominick

State Senator

927 Brown Marx Building

Birmingham, Alabama 35203

Courts—Divorce—Registers—Jefferson County.

Procedure for register in chancery to follow in handling divorce cases discussed.

Opinion by Assistant Attorney General Tyson.

Dear Senator Dominick:

Your recent request for an opinion of this office is as follows:

“Re: 1971 Regular Session of the Alabama Legislature —  
Relating to Divorce.

“I am hopeful that your office can clear up some questions that have arisen regarding the above new act, which provides for a neutral case title and styling in divorce proceedings and a new ground for divorce (irretrievable breakdown). A copy of the act is attached.

“The Register in Chancery Court here in Jefferson County has raised a question about the substitution of the word ‘petition’ for ‘bill,’ as he feels that a petition is normally considered a secondary proceeding and not an original proceeding. I can find no statutory authority for this interpretation but I do find that Equity Rule 2 requires that suits in Equity be commenced by a ‘bill of complaint,’ and Equity Rule 4 requires the filing of a ‘bill of complaint’ before the issuance of a summons. In keeping with the no-fault concept initiated by these changes, however, it is necessary that a neutral title such as ‘petition’ be used rather than an adversary title, such as ‘bill of complaint.’ The State of Florida has recently enacted a no-fault concept divorce statute and their original proceeding is termed a petition.

The Uniform Marriage and Divorce Act drafted by the National Conference of Commissioners on Uniform State Laws and recommended by the American Bar Association terms their original proceeding a petition. Based upon this, my first question is:

“1. May the word ‘petition,’ as used in Title 34, Sec. 20, Code of Alabama, as amended, be considered to be analogous with the word ‘bill’?

"The neutral case styling provided for by the new act ('In re: Marriage of \_\_\_\_\_ and \_\_\_\_\_') is intended to reduce the hostile atmosphere of divorce proceedings but it apparently has also raised some clerical problems for the Registers in indexing and processing divorce actions. Heretofore the adversary styling has designated one of the parties as complainant and the other party as respondent and has enabled the Registers to index accordingly, but under the neutral styling it is not as clearly apparent to the Register which party is the movant or petitioner in the case. Some guideline to insure uniform handling is needed in this respect; perhaps, that the first party named in the neutral styling is to be considered to be the movant or petitioner and therefore indexed under the complainant column, and the second party named in the new styling be indexed under the respondent column. The following question is therefore posed:

"2. May Registers in Chancery Court, for the purpose of indexing and otherwise handling proceedings commenced under Title 34, Sec. 20, of the Code of Alabama, as amended, consider the first name shown in the neutral styling to be the petitioner or complainant and the second name shown to be the respondent?"

Your second letter enclosed a copy of the Saturday, October 16, 1971, "Alabama Messenger," which you indicate explains the Jefferson County Register's position on the above Act.

It is the opinion of this office that both of your inquiries should be answered in the affirmative. It is further the opinion of this office that the Register in Chancery must accept a petition styled "In re: Marriage of \_\_\_\_\_ and \_\_\_\_\_." From a purely bookkeeping point of view, the register may consider the first name used to be the movant, and therefore index the complainant column and the second name under the respondent column.

Cordially yours,

**WILLIAM J. BAXLEY**  
Attorney General

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November 1, 1971

Honorable Walter G. Bridges

Judge

Bessemer Division Court

Courthouse

Bessemer, Alabama

Courts—Banks & Banking—Financial Institutions—  
Loans.

Features of "Mini Code" discussed

Opinion by Assistant Attorney General Clark.

Dear Judge Bridges:

This will acknowledge your letter of October 6, 1971, relating to the "Mini-Code," asking the following questions:

- "1. Does this Act apply to contracts made prior to the adoption of the Act but for which suits are filed after the adoption of the Act?
- "2. Does the Act apply to services rendered for which no agreement was made for credit but after rendition of services the recipient of the services did not pay the charges, such as a doctor's bill, hospital bill, and attorney's fees?
- "3. Does the Act apply to the sale of merchandise for which no finance charge is made and is normally on a month to month basis and the debtor who has received the goods during the course of the month does not pay the bill when due, such as groceries purchased from a neighborhood grocery or gasoline purchased from a neighborhood gasoline station?
- "4. Does the Act apply to merchandise that is delivered to a customer for an agreed price with no finance charges added but an agreement that the price of the merchandise will be paid in periodic payments.
- "5. In Section 11 of the Act relating to exemption of service on garnishment procedures severable from the remainder of the Act and what application does this provision have to garnishment processes as to:
  - "A. For services rendered?
  - "B. For accounts payable normally within thirty days for which no finance charge has been added?
  - "C. For merchandise that has been delivered but no finance charge has been added and the price is to be paid in the future?"

My answer to your first question is in the negative except as to renewals and refunds on loans. This is covered by Rule 4(a) made by the administrator.

My answer to both your second and third questions is in the negative. Section 1(c) of Act No. 2052 ("Mini-Code").

My answer to your fourth question is a qualified no. Section 1(a) of the Mini-Code holds that a time price differential shall be considered

a finance charge. If the finance charges are apparently included in an inflated agreed price, then the Act would apply.

As to the fifth question: Section 11 of the Act is not severable.

My answer to A and B is in the negative. My answer to C is a qualified negative due to Section 1(a) of the Act. Some consideration should possibly be given to Federal Regulation Z.

I trust this will answer some of the questions arising out of the Mini-Code. I am enclosing a copy of the regulations issued by the Banking Department.

Yours very truly,

WILLIAM J. BAXLEY  
Attorney General

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November 2, 1971

Honorable Howard E. Hendrix

Director, Department of Labor

State of Alabama

600 Administrative Building

Montgomery, Alabama

State and State Departments—Department of Labor—  
Funds.

May not buy holiday greeting cards with State funds.

Opinion by Assistant Attorney General Yung.

Dear Mr. Hendrix:

Reference is made to your letter of October 21, 1971, wherein you request an opinion of this office as to whether or not it would be legal for the Alabama Department of Labor to spend State funds for the purchase and mailing of holiday greeting cards to other governmental agencies and to individuals doing business with the Department of Labor.

This office has previously ruled that State colleges and trade schools cannot legally spend public funds for the purchase and mailing of holiday greeting cards, Quarterly Report of the Attorney General, Vol. 129, page 27. That opinion was based on the fact that appropriated public funds can be expended only for the statutory purposes of the divers State agencies and departments.

The buying and mailing of holiday greeting cards is not within the statutory purposes of the Department of Labor, and, therefore, State funds cannot be legally expended for such purposes.

Very truly yours,

WILLIAM J. BAXLEY  
Attorney General

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November 4, 1971

Honorable LeRoy Brown, Superintendent

State Department of Education

State Office Building

Montgomery, Alabama 36104

Schools—State Board of Education—Funds—County Boards of Education.

State Board may not withhold funds from local board which fails to appoint trustees.

Opinion by Assistant Attorney General Madison.

Dear Dr. Brown:

In your request for an opinion of this office, dated November 3, 1971, you ask the following question:

"Does the State Board of Education have the authority to withhold State funds from a local board of education which fails to appoint trustees for each school under its jurisdiction?"

The question is answered in the negative.

The duties of public school trustees are many and important but are separate and distinct from those of county boards of education. **Roberts v. Bright, et al.**, 222 Ala. 677, 133 So. 997; Quarterly Report of Attorney General, Volume 138, page 46; Title 52, Sections 100, 138-147, Code of Alabama 1940, Recompiled 1958.

Section 100, as amended, Title 52, Code of Alabama 1940, Recompiled 1958, provides that the county board of education shall appoint for every school in the county from a list of six discreet, competent, and reliable persons of mature age, **nominated by the patrons of said schools**, three persons residing near the school to serve as public school trustees.

It is apparent from reading Section 100, *supra*, that the county board of education cannot act at all until six persons have been **nominated by the patrons** of said school.

At one time the county board of education appointed the three trustees, and the patrons of the school had no voice in their selection. Act No. 442, General Acts 1919, page 588.

Then by Act No. 59, General Acts 1931, page 672, it was provided that the trustees should be elected by the patrons of the school. Then the county board of education had no voice in their selection.

It is clear now from Section 100, supra, that both the school board and the patrons have a voice in their selection. Quarterly Report of Attorney General, Volume 95, page 35.

In *State v. Payne*, 224 Ala. 223, 139 So. 99, it was held that the lawmakers contemplated that the patrons should have a voice in the matter and that their wishes, as well as the law, should not be arbitrarily ignored and brushed aside.

I know of no legal way to compel the patrons of the school to nominate six persons from which to select three as trustees as the law is now written. In the absence of such a nomination, the county board is not required or permitted to act.

It results, therefore, that the school board may not be denied funds for failure to do that which they cannot do.

If the patrons have made the proper nominations, as provided by Section 100, supra, the statute says that three trustees shall be appointed by the pertinent county board of education. It is my view, however, that this duty may not be enforced by withholding state funds.

In addition, the Supreme Court of Alabama has ruled that local boards only have the authority to close schools, and the denial of funds by the State Board would, in effect, lead indirectly to doing that which they may not do directly. *Opinion of the Justices*, 276 Ala. 239, 160 So. 2d 648.

Cordially yours,

**WILLIAM J. BAXLEY**  
Attorney General

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November 4, 1971

Honorable Norman Darden

Mayor

City of Albertville

Albertville Alabama,

Municipalities—Funds—Property—Urban Renewal.



Mayor should recuse himself from voting on proceedings in which his property is involved.

Opinion by Assistant Attorney General Tyson.

Dear Mr. Darden:

Your recent request for an official opinion of this office is as follows:

"I would appreciate your ruling on the following matter.

"There is an Urban Renewal project underway in our City, and it will be necessary that a number of buildings be acquired from the owners and demolished. The procedure generally followed is for the Urban Renewal people to negotiate with the owners and purchase the property based on prior appraisals by those recognized by HUD competent to make such appraisals. Once the property is acquired, it is turned over to the City which is the local Public Agency; the City in turn will advertise for bids for the razing of the buildings, and the property is cleared as to fit in with the project.

"It so happens that my sons and I are in the cotton business as partners; the building that houses the cotton office is owned by me personally except for an extension which is owned by the partnership. This building is within the U. R. project, and must be purchased and demolished.

"I would like to have your opinion as to whether a conflict of interests might jeopardize my position as Mayor, inasmuch as I will be paid for the property, and then the City itself will be involved in the disposition of it.

"Seemingly, this places me in a peculiar situation over which I actually have no control inasmuch as my property is within an approximate 82 acre Urban Renewal project.

"I would appreciate your advice on this at your earliest convenience."

Under the facts presented by your request, it is the opinion of this office that you should recuse yourself in voting on any matter as Mayor or as a member of the Council in which property that you own a personal interest would be taken under the Urban Renewal project in question, and you would therefore receive compensation for this property.

I trust this answers your inquiry.

Very truly yours,

**WILLIAM J. BAXLEY**  
Attorney General

November 5, 1971

Honorable Glenn N. Baxter

Assistant City Attorney

City of Tuscaloosa

P. O. Box 2089

Tuscaloosa, Alabama 35401

Municipalities—Funds—Housing Authority.

City or City Housing Authority may pay moving expenses and attorneys' fees under Federal Relocation Act.

Opinion by Assistant Attorney General Tyson.

Dear Mr. Baxter:

Your recent request for an official opinion of this office is as follows:

"In the past when a local public agency (either Housing Authorities or Municipalities) has engaged in an Urban Renewal Project, relocation assistance has been one hundred percent federally funded. However, under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) the cost to a state agency of providing relocation payments and assistance will be included as part of the cost of a program or project for which federal financial assistance is available, and such state agency will be eligible for federal assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs. In other words, after July 1, 1972, all payments made to persons deslocated as a result of an Urban Renewal Project will come directly from the local public agency (either Housing Authorities or Municipalities).

"In order to be eligible for federal funds, the local public agency must give assurances to the Department of Housing and Urban Development that it will comply with certain provisions in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. My question involves the legality, under Alabama Law, of the local public agency's compliance with certain of the required sections under the Act. I have enclosed a copy of the Act and will therefore refer only to sections rather than setting them out verbatim.

"1. May local public agencies (either Housing Authorities or Municipalities), under Alabama Law, comply with the following sections of Title II of the Act: Section 202 relating to moving and related expenses; Section 203 relating to replacement hous-

ing for homeowners; and Section 204 relating to replacement housing for tenants and certain others?

"2. May local public agencies (either Housing Authorities or Municipalities), under Alabama Law, pay or reimburse property owners for the necessary expenses specified in the following sections of Title III: Section 303 relating to expenses incidental to transfer of title; and Section 304 relating to litigation expenses?

"This information is needed prior to a relocation conference which is scheduled in Tuscaloosa around the middle of November. I would therefore appreciate it very much if you could render your opinion on this matter at your earliest convenience."

Under Title 1, Section 101 of the Uniform Relocation Assistance and Lands Acquisition Policies Act of 1970 (Public Law 91-646), it is the opinion of this office that the term "state agency" includes both municipalities and/or municipal housing authorities as used by said Act.

It is further the opinion of this office that both inquiries, as above set forth, should be answered in the affirmative insofar as the specific expenses may be claimed pursuant to the provisions of the several sections of the Act in question.

I trust this answers your inquiries.

Cordially yours,

**WILLIAM J. BAXLEY**  
Attorney General

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November 8, 1971

Honorable R. J. Stembridge

Judge of Probate

Houston County

Dothan, Alabama 36301

Judges of Probate—Bonds—Licenses—Real Estate.

After April 1, 1972, new bond requirement for real estate brokers and salesmen.

Opinion by Assistant Attorney General Clark.

Dear Judge Stembridge:

This will acknowledge your letter of November 4, 1971, requesting an opinion as to whether a new bond will be required on all existing real

estate and broker salesmen as of April 1, 1972, the effective date of the new Alabama Real Estate License Law.

Both the old law and the new law provide that the bond must be filed with the Real Estate Commission prior to the issuance of a license and that a new bond or a renewal or continuation of the original bond shall be required for each yearly licensing period.

In my opinion this means that the bond now in force shall be effective until the renewal period next year. However, for each broker or salesman obtaining a new license on or after April 1, 1972, the new bond requirement will be in effect.

Yours very truly,

WILLIAM J. BAXLEY  
Attorney General

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November 9, 1971

Honorable Jere Beasley

Lieutenant Governor

State of Alabama

Montgomery, Alabama

State and State Departments—Legislature—Senate—Secretary of State.

Time for filing Senate and House Journals with the Secretary of State outlined.

Opinion by Assistant Attorney General McQueen.

Dear Governor:

I have your letter of recent date which is as follows:

"Due to the record number of bills which were considered in the 1971 Regular Session of the legislature, I have granted the Secretary of the Senate the maximum time period allowed under Title 32, Section 24, Code of Alabama, as amended, for filing the Senate Journal with the Secretary of State. Since there is a distinct possibility that a special session of the legislature will be called prior to the expiration date for filing the Journal, your opinion is respectfully requested on the following questions:

"1) If a special session is called prior to the deadline for filing the Senate Journal for the regular session, would the Secretary of the Senate then be allowed an additional extension for filing said Journal with the Secretary of State?

"2) Would the calendar days of such a special session count against the total period allotted for filing the Senate Journal should the special session be called prior to the date for filing the Journal under the extension granted?

"Your consideration in this matter will be greatly appreciated."

My answer to your first question is in the negative.

You state in your request that you have allowed the Secretary of the Senate the maximum period allowed under Title 32, Section 24, Code of Alabama 1940, as amended, for filing the Senate Journal of the regular session with the Secretary of State. This extension was granted by you due to the fact that the regular session was held within six weeks after the final adjournment of a special session. Under the provisions of Section 24, *supra*, when this situation exists the maximum time which you may allow the Secretary of the Senate to file the Journal with the Secretary of State is six weeks. You have, in fact, granted to the Secretary of State all of the time allowed by Section 24, *supra*, to file the Journal of the regular session. This time, including the six weeks allowed by law and the extension granted by you, makes a total of twelve weeks after the final adjournment of the regular session to file the Journal with the Secretary of State. This twelve-week period cannot be extended.

My answer to your second question is in the negative.

In the event a special session is called within six weeks after final adjournment of the regular session, the time for filing the Journal of the regular session will be tolled as of the date of the convening of the special session. This is to say, that any number of weeks remaining of the twelve weeks for filing the Journal of the regular session will not begin to run until the final adjournment of the special session. For example, if there are four weeks remaining of the original twelve weeks for filing the Journal, the Secretary of the Senate will have four weeks after the final adjournment of the special session in which to file the Journal of the regular session with the Secretary of State.

Yours very truly,

WILLIAM J. BAXLEY  
Attorney General

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November 9, 1971

Honorable Perry O. Hooper

Judge of Probate

Montgomery County Court House

Montgomery, Alabama

Judges of Probate—Costs and Fees—Licenses.

New cost of hunting and fishing licenses is tax increase and not affected by wage-price freeze.

Opinion by Assistant Attorney General Yung.

Dear Judge Hooper:

Reference is made to your letter of November 5, 1971, wherein you request an opinion of this office as to whether or not the recent legislative increase in the cost of hunting and fishing licenses and the increase in the issuance fees for hunting and fishing licenses and for boat licenses are in violation of the current wage-price-rent freeze. The above-mentioned license and fee increases were approved by the 1971 Regular Session of the Alabama Legislature.

In my opinion the increase in **issuance fees** for hunting and fishing licenses and for boat licenses is in violation of the wage-price-rent freeze imposed by Executive Order Number 11615, issued August 15, 1971, by President Nixon, as the same has been interpreted by the Office of Emergency Preparedness and the Secretary of the Treasury.

It is, therefore, the opinion of this office that you should immediately return to the issuance fee schedule in effect prior to the freeze.

It is further the opinion of this office that the increase in the **cost** of hunting and fishing licenses, also imposed by the 1971 Regular Session of the Alabama Legislature, is a genuine increase in taxes and as such is not affected by the current wage-price-rent freeze.

Very truly yours,

**WILLIAM J. BAXLEY**  
Attorney General

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November 12, 1971

Honorable Charles A. Boswell

Commissioner of Revenue

Administrative Building

Montgomery, Alabama

State and State Departments—Revenue Department—Taxation—Ad Valorem Taxes.

Commissioner of Revenue has no authority under rule making power to fix ratio of ad valorem assessment.

Opinion by Assistant Attorney General Livingston.

Dear Mr. Boswell:

Your request for an opinion dated November 12, 1971 is as follows:

"Title 51, section 17, Code of Alabama 1940, which statute has not been validly amended (see **Lee et al v. Boswell**, U.S. District Court, Middle District of Alabama, June 29, 1971) provides as follows:

"§ 17. Assessment rate.—All taxable property within this state shall be assessed for the purpose of taxation at sixty percent of its fair and reasonable market value."

"Your opinion is requested as to the following question: Can the commissioner of revenue legally order the assessment of taxable property at any percentage of fair and reasonable market value less than 60%?"

My answer to your question is in the negative. While the commissioner of revenue has the authority to issue orders and reasonable rules and regulations, he cannot thereby legally change the law as enacted by the legislature. In the case of **Hamm v. State, ex rel.**, 250 Ala. 81, 33 So. 2d 358, the Supreme Court of Alabama stated:

"We recognize the authority of the Commissioner to make reasonable rules and regulations as the statute prescribes. But that power is administrative in character, and legislation may not be enacted under the guise of the exercise by issuing a regulation which is out of harmony with, or alters, extends or limits the statute being administered. 42 Am. Jur. 358.

"The authorities noted by counsel for the Commissioner recognize that rules and regulations must not be inconsistent with the statute. *Detroit & Windsor Ferry Co. v. Woodworth*, 6 Cir., 115 F. 2d 795; *Odel & Co. v. United States*, 63 F. Supp. 955, 104 Ct. Cl. 680; *Burruss v. Early D. C.*, 44 F. Supp. 21; *First National Bank of Greeley v. United States*, 10 Cir. 86 F. 2d 938."

The Federal District Court in the case of **Lee, et al v. Boswell**, June 29, 1971, also stated:

"Delegating to an administrative agency the power to fix the ratio of assessment, without formulating a definite and intelligible standard to guide the agency in making its determination, constitutes an unconstitutional delegation of legislative power."

If the legislature cannot delegate to the commissioner of revenue the power to fix the ratio of assessment, he certainly cannot assume such authority.

Therefore, in view of section 17, *supra*, it is my opinion that the commissioner of revenue cannot legally order the assessment of taxable

property in this state at any percentage of fair and reasonable market value less than 60%.

Very truly yours,

**WILLIAM J. BAXLEY**  
Attorney General

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November 12, 1971

Honorable William B. Hairston, Jr.

Recorder

The City of Leeds

Leeds, Alabama 35094

Municipalities—Courts—Costs and Fees.

Fair Trial Tax applies only to cases where violation of ordinance is also violation of state law.

Opinion by Assistant Attorney General Tyson.

Dear Mr. Hairston:

Your recent request for an official opinion of this office is as follows:

"Please advise as to whether or not the Recorder's Court of Leeds, Alabama is subject to collect, as cost in the cases pending before it, the Fair Trial Tax contained in Act # 2421, H. 74, Regular Session, 1971, which amends Act #60, H. 218, Second Special Session. In the event that you should be of the opinion that the Fair Trial Tax applies to those cases pending before the Recorder's Court of Leeds, Alabama, I would appreciate your further advice as to whether or not it applies to all such cases or merely to those cases wherein the violation of the City Ordinance is also a violation of State Law."

Act No. 2421, 1971 Regular Session, Acts of Alabama, became **effective** on October 1, 1971, upon its approval of Honorable George C. Wallace, Governor of Alabama. Under this Act this office is of the opinion that the Fair Trial Tax applies to those cases filed on or after October 1, 1971, in the Recorder's Court of Leeds, Alabama.

This office is further of the opinion that under Section 2 of the Act in question that the Fair Trial Tax applies only to those cases wherein the violation of the city ordinance is also a violation of State Law.

We trust this answers your inquiry.

Very truly yours,

**WILLIAM J. BAXLEY**  
Attorney General



November 12, 1971

Honorable Randy Quinn, Executive Director

Alabama Association of School Boards

P. O. Box 6133

University, Alabama 35486

Schools—City Boards of Education—County Boards of Education—Insurance.

City and county school boards may now purchase liability insurance on vehicles owned by same.

Opinion by Assistant Attorney General Madison.

Dear Mr. Quinn:

Your letter of October 28, 1971, is as follows:

"You are no doubt aware of the recent availability of indemnity insurance coverage for public school board members, protecting boards and their members from errors or acts of omission. A policy has been approved by the State Insurance Department for Pacific Indemnity Company, and other companies are soon to file application for approval of similar policies.

"The Alabama Association of School Boards has disseminated information about this new coverage to all school superintendents in Alabama. Resulting from this was a question from one of our boards relative to the legality of a board's paying indemnity insurance premiums from public money.

"In order to ensure proper action, we would appreciate your rendering an opinion on this matter, which will be made available to our membership."

This office has reviewed its former opinions on the question presented, and it is my opinion that liability insurance on all vehicles owned or operated by the county and city boards of education and for the protection of school board members from errors or acts of omission may be legally secured and paid for from public funds. **Hughes v. Hartford Accident and Indemnity Co.**, 223 Ala. 59, 134 So. 461; **Paul v. Escambia County Hospital Board**, 218 So. 2d 817.

All former opinions of this office to the contrary are expressly hereby overruled, including the one reported in Quarterly Report of Attorney General, Volume 125, page 30.

Cordially yours,

**WILLIAM J. BAXLEY**  
Attorney General

November 12, 1971

Honorable Charles Sprayberry, Superintendent

Tuscaloosa County School System

2314 Ninth Street

Tuscaloosa, Alabama 35401

Schools—Insurance—County Boards of Education—City  
Boards of Education.

City and county school boards may purchase liability insurance on vehicles owned or operated by board.

Opinion by Assistant Attorney General Madison.

Dear Dr. Sprayberry:

I have your letter of November 8, 1971, relative to liability insurance for the bus driver employees of the Tuscaloosa County Board of Education and related matters.

In an opinion of this office reported in Quarterly Report of Attorney General, Volume 48, page 260, this office ruled that a county board of education is not authorized to employ counsel to represent a county school bus driver who is being sued in a personal injury action on a claim arising out of said driver's operation of a county school bus. The opinion appears to be sound and is reaffirmed.

The question of liability insurance for the protection of bus drivers and other employees requires special consideration.

By my opinion of November 12, 1971 (today released), to Honorable Randy Quinn, Executive Director, Alabama Association of School Boards, University, Alabama, it is now ruled that liability insurance on all vehicles owned or operated by county and city boards of education and for the protection of school board members from errors or acts of omission may be legally secured and paid for from public funds. **Hughes v. Hartford Accident and Indemnity Co.**, 223 Ala. 59, 134 So. 451; **Paul v. Escambia County Hospital Board**, 218 So. 2d 817.

All former opinions of the office to the contrary were overruled, including the one in Quarterly Report of Attorney General, Volume 125, page 30.

As stated by Judge Sibley in **Ayers v. Hartford Accident and Indemnity Company**, 106 Fed. 2d 958, the policy there considered "gives the right **without further premium** to extend the insurance to the bus driver as an assured. If this had been done, judgment might have been recovered against him and collected out of the company. The premium thus purchased important rights, and did not go wholly for nothing." [Emphasis supplied.]

The above case is cited in Quarterly Report of Attorney General, Volume 86, page 7, and particular attention is drawn to pages 12 and 13 of that opinion.

So, from what has been said above, you may be able to obtain insurance for the Board members which also includes an omnibus clause or extended coverage, which covers its servants, agents, and employees using the vehicle with permission.

In addition, this office ruled in Quarterly Report of Attorney General, Volume 112, page 88, that a board of education may require a contract driver to carry a policy of liability insurance during the term of the contract for the protection of himself as well as anyone injured as a result of an accident for which he may be liable.

It would be possible then to include the cost of the liability insurance in the contract as part of the amount to be paid the bus driver. See Quarterly Report of Attorney General, Volume 116, page 12, Xerox copy of which is enclosed; **Opinion of the Justices**, 249 Ala. 88, 30 So. 2d 14.

Cordially yours,

**WILLIAM J. BAXLEY**  
Attorney General

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December 3, 1971

Honorable Robert I. Gulledge

Superintendent of Banks

State Administrative Building

Montgomery, Alabama

Credit Unions—Mini-Code.

Credit Unions are not subject to or regulated by Alabama Consumer Credit Act of 1971, also known as the "Mini-Code."

Opinion by Assistant Attorney General Clark.

Dear Mr. Gulledge:

This will acknowledge your letter of October 29, 1971, with enclosures, wherein there is asked the question if credit unions are affected by the Alabama Consumer Credit Act of 1971, Act No. 2052, General and Local Acts 1971, also known as the Mini-Code."

My answer to your question is in the negative.

Section 18(a) of the Mini-Code specifically exempts credit unions from the licensing requirement.

Also Section 18(j) requiring notice of intent with a yearly fee of \$10.00 plus additional fees of \$10.00 for each \$100,000.00 applies only to those not already licensed under the Act and who are "engaged in the business of making credit sales." Credit Unions do not come under that classification.

The purpose of the Mini-Code was to provide finance charges for loans and credit sales; to regulate extensions of credit, including consumer credit sales and consumer leases, to provide penalties for violations and to appoint someone to administer the Act.

Clearly, the intent of the Legislature was not to regulate the credit unions. They were already permitted to charge one percent a month on unpaid balances under Title 28, Section 296, Code of Alabama 1940. Also, the Act was passed to prevent the making of excessive profits as a result of taking unfair advantage of the public at large. Credit unions have a limited membership and regulate themselves and loans by means of a credit committee.

Further, it is noted that Section 25 of the Mini-Code does not repeal Sections 282-303, Title 28, Code of Alabama 1940, as amended, covering credit unions. Repeal of the credit union statute could only be repealed, if at all, by implication.

The matter of repeal by implication was discussed in Quarterly Report of Attorney General, Vol. 54, page 151, as follows:

" . . . It is an established rule of statutory construction that repeal by implication is not favored, but is looked upon with great disfavor.

**"State v. Smiley,**  
219 Ala. 119, 121 So. 398;

**"W. S. Brown Mercantile Co. v. Yeilding Bros. Dept. Store,**  
200 Ala. 412, 76 So. 4;

**"Tucker v. McLendon,**  
210 Ala. 561, 98 So. 797;

**"Davis v. Browder,**  
231 Ala. 332, 165 So. 89.

"This rule is well stated in **Southerlands' Text on Statutory Construction** as follows:

. . . . .

"Section 575, Lewis Southerland Statutory Construction, (Second Edition.)

"It is a maxim in the construction of statutes that the law does not favor a repeal by implication. The earlier statutes continue in force unless the two are clearly inconsistent with and repugnant to each other, or unless in the later statute some express

notice is given of the former plainly indicating an intention to repeal it; and where two acts are seemingly repugnant they should, if possible, be so construed that the later may not operate as a repeal of the former by implication.'

"Thus, the invariable rule of construction in respect to the repeal of statutes by implication is that the earliest act remains in force, unless the two are manifestly inconsistent with and repugnant to each other. However, this inconsistency or repugnancy must be absolute, invincible and material, so that the two acts cannot be harmonized or given effect at the same time. Conversely, it is a general rule that an act is not impliedly repealed because of conflict, inconsistency or repugnancy between it and a later act unless the conflict is plain unavoidable, and irreconcilable. See **Cook v. Myer**, 73 Ala. 580; **Riggs v. Brewer**, 64 Ala. 282; **Parker v. Hubbard**, 64 Ala. 203."

Thus, based on exemptions from licensing and filing notice of intent, the fact that credit unions do not present the problem to be regulated, together with the unique nature of credit unions, and that Sections 18(a) and (j) of the Act exempt them from payment of license or fee, it is my opinion that credit union operations are not affected by Act No. 2052, *supra*.

Yours very truly,

**WILLIAM J. BAXLEY**  
Attorney General

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December 7, 1971

Honorable Richard Arthur, Director

State Department of Aeronautics

State Highway Building

Montgomery, Alabama 36102

State and State Departments—State Aeronautics Department—Airports—Funds—Municipalities.

Municipal airport authority may pay person or business displaced by construction work.

Opinion by Assistant Attorney General Tyson.

Dear Mr. Arthur:

Your recent request for an official opinion of this office is as follows:

"Will you please give us your official opinion of Title 4, Chapter 1-A 20(40) Aviation Act in the Code of Alabama, Recompiled 1967—Cumulative Pocket Part, if an airport authority or a municipality can receive and disburse Federal funds for the purpose of paying person/businesses displaced after January 2, 1971 for construction work on airports."

Your inquiry is answered in the affirmative as specific authority is granted municipal airport authorities under the provisions of Title 4, Section 20(39) and 20(40), to receive and disburse Federal funds under contract for the purpose of paying a person or business displaced after January 2, 1971, for construction work on airports.

I trust this answers your inquiry.

Cordially yours,

WILLIAM J. BAXLEY  
Attorney General

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December 9, 1971

Honorable Robert I. Gulledge

Superintendent of Banks

State Administrative Building

Montgomery, Alabama 36104

State and State Departments—Banks and **Banking**—Depositories.

Use by banks of automatic unmanned machine for banking discussed.

Opinion by Assistant Attorney General Clark.

Dear Mr. Gulledge:

This will acknowledge your letter of December 9, 1971, requesting answer to the question posed by Federal Deposit Insurance Corporation as to desire of the State Legislature in passing Act No. 1913 amending Title 5, Section 131, Code of Alabama 1940.

Title 5, Section 131, as amended by Act No. 1913, now reads as follows:

"Section 131. Any bank or trust company doing a banking business may lawfully receive deposits and, or, pay checks or sight drafts and transact any other business on any legal holiday, excepting Sunday, in the same manner and way that it is authorized to do on any legal banking day. Nothing herein, nor

any other law of this State shall be construed to prohibit a bank organized under the laws of Alabama the use of an automatic unmanned cash dispensing machine, twenty four hours each day of the week including Sunday, and the use of such machine by any bank organized under the laws of this State is hereby authorized, provided such machine and the use thereof is first approved by the Federal Deposit Insurance Corporation."

Prior to its amendment, Section 131, *supra*, contained only the first sentence of the present law and prohibited banking on Sunday. Your department considered use of the automatic unmanned cash dispensing machine on Sunday as doing banking business and refused to allow its use on Sunday.

Subsequently, Act No. 1913 was passed permitting use of an automatic unmanned cash dispensing machine twenty-four hours each day of the week including Sunday in any bank organized under the laws of Alabama after such machine and its use was approved by the Federal Deposit Insurance Corporation.

The amendment to Section 131, *supra*, dispensed with the necessity of any approval by your department for the use of such machine.

The FDIC is the insuror of deposits in the State banks and it would be extremely difficult for a State bank to maintain the confidence of depositors without such insurance. In fact, in the banking business, such insurance is considered a "must."

The approval by FDIC of the automatic unmanned cash dispensing machine was intended, in my opinion, to prevent a State bank from doing an act which could possibly jeopardize such insurance coverage.

Yours very truly,

**WILLIAM J. BAXLEY**  
Attorney General

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December 16, 1971

Honorable L. J. Swinea  
Clerk & Register  
Circuit Court  
Limestone County

Honorable E. R. Lindsey  
Register  
Circuit Court in Equity  
Jefferson County

Honorable Eunice G. Tindale

Register

Circuit Court in Equity

Baldwin County

Honorable John R. Matthews

Clerk

Circuit Court

Montgomery County

Costs & Fees—Appeals—Circuit Courts—Garnishments—Mayor—Municipalities—Recorder's Court—Opinions Overruled, Modified or Distinguished—Trial Tax—Words & Phrases—Workmen's Compensation.

1. Fair trial tax applicable to all "suits at law or in equity" including garnishments, workmen's compensation and appeals from recorders' courts.
2. Fair trial tax applicable to cases filed and docketed on or after October 1, 1971. Tax attaches at time of docketing.
3. Fair trial tax is in addition to the trial tax.
4. Fair trial tax is subject to five percent commission by circuit clerks and registers.
5. Fair trial tax not applicable in municipal, mayor or recorder courts where offense charged is not a violation of state law.
6. Quarterly Report of Attorney General, Volume 121, page 37, withdrawn.

Opinion by Assistant Attorney General Webb.

Gentlemen and Mrs. Tindale:

I have your requests for an opinion of recent date which I have combined for the purposes of this opinion. Your letters all deal with the provisions of Act No. 2421, Regular Session 1971, approved October 1, 1971, and, in essence, your questions are as follows:

1. Does the fair trial tax apply to all civil cases, including garnishments, workmen's compensation, and all criminal cases including appeal cases from recorder's court?
2. When should the clerk or register apply the fair trial tax? Is it taxed after final disposition or on the date of the filing of the civil or criminal action?



3. Is the fair trial tax applicable to cases filed before October 1, 1971 and disposed of after that date?
4. Is the act applicable to cases filed or disposed of in the court in the interim period between October 1 and October 20, 1971 at which date many clerks and registers received official notice of the passage of the act?
5. Is the fair trial tax in addition to the trial tax now collected on civil cases?
6. Should the clerk or register retain a five percent commission on each fair trial tax collected for the benefit of the county?
7. Please explain that portion of the act reading: "Cases in the Mayor's, Records, or Municipal Courts wherein the offense charged is the violation of an ordinance of the city or town; but not in cases in such courts where the offense charged would also be a violation of state law."

Act No. 2421 of the Regular Session 1971, *supra*, amends Sections 1, 2, 3, 4, & 6 of Act No. 60, Acts of Alabama 1965 (Second Special Session), page 85. This act was signed into law on October 1, 1971. Act No. 60 established a fair trial tax applicable to criminal cases and has previously been interpreted by an opinion of this office to Mrs. Sara Blackwell, Circuit Clerk, Colbert County, dated November 30, 1965, reported in Quarterly Report of Attorney General, Volume 121, page 37. That opinion held the fair trial tax not to be applicable to such civil proceedings as bond forfeiture cases. This opinion, of course, is superseded by provisions of Act No. 2421, *supra*, and therefore is withdrawn.

Section 1 of Act No. 60, as amended by Act No. 2421, *supra*, now imposes a fair trial tax of two dollars on each criminal or quasi-criminal case:

"... and every **suit at law or in equity** docketed in any court created by authority of the Constitution or other laws of the State of Alabama." (Emphasis supplied.)

The only exception now provided is that specified in Section 2 which is inapplicable insofar as you are concerned as clerks and registers of the circuit courts. I am, therefore, of the opinion that your first question should be answered in the affirmative. Section 1 requires the fair trial tax be collected in each criminal or quasi-criminal case and each "suit at law or in equity" in any court created under laws of this State.

The term "suit at law or in equity" as used in this statute is the same term used in Title 11, Section 59, Code of Alabama 1940, Recompiled 1958, requiring non-residents of the State to give security for costs. This term has been held by our Supreme Court to include a petition for mandamus to contest a will, *Ex parte Winn*, 226 Ala. 447, 147 So. 625, but not to include an in rem proceeding by a guardian ad litem in the nature of an objection to a will. *Ex parte Petty*, 249 Ala. 393, 31 So. 2d. 575. The

term also includes a petition for habeas corpus seeking custody of a minor child, **Ex parte Blackburn**, 204 Ala. 132, 85 So. 495, and includes divorce cases, **Gee v. Gee**, 252 Ala. 104, 39 So. 2d. 407. The term includes a bill to sell land for division of proceeds among joint owners, **Kendrick v. Word**, 246 Ala. 550, 21 So. 2d. 676, and the term includes an action in statutory ejectment, **Brown v. Ellison**, 239 Ala. 320, 194 So. 822. Based on these decisions, I am of the opinion that the tax would be applicable to garnishments, workmen's compensation and appeal cases from the recorder's court. The term "suit at law or in equity" as used in the Acts of Congress relating to removal of causes has been interpreted by the U. S. Supreme Court in **Gaines v. Fuentes**, 92 U. S. 10 (See Words & Phrases, Volume 40A, page 239). In this case the court held:

"... must be construed to embrace all litigation between parties which in the English system of jurisprudence ... were embraced in all of the various forms of procedure carried on in the ordinary law and equity courts, as distinguished from the ecclesiastical, admiralty, and military courts in the realm."

In answer to your second, third and fourth questions, the tax is applied at the time of docketing and applies to all cases filed and docketed on or after October 1, 1971 which is the effective date of the act. Cf. opinion of this office to Honorable William B. Hairston, Jr., Recorder, City of Leeds, November 12, 1971.

I answer your fifth question in the affirmative. The tax by express provision of Section 1 is in addition to all other taxes. The trial tax referred to by you is provided for in Title 51, Section 20, Code of Alabama 1940, Recompiled 1958, and I find no conflict between the two acts.

Your sixth question is answered in the affirmative. Title 11, Section 22, authorizes a commission to circuit clerks and registers of five percent on all amounts collected and remitted to the State of Alabama. In my opinion, the commission provided for in this section is equally applicable to those taxes collected under Act No. 60, as amended by Act No. 2421, *supra*.

The portion of Act No. 2421, *supra*, referred to in your seventh question is the exemption section now provided for in Section 2, as amended. This section exempts from the fair trial tax:

"Cases in the Mayor's Recorders, or Municipal Courts wherein the offense charged is the **violation of an ordinance of the City or town**; but not cases in such courts where the offense charged would also be a violation of State law." (Emphasis supplied.)

In my opinion, this section means that, in those cases tried before the mayor, recorder, or municipal court, the tax provided for in this act shall be collected only when the offense charged is also a violation of state law. Cf. opinion to Honorable William B. Hairston, Jr., *supra*. This phrase has virtually no effect on appeals since the case is docketed and (and in either event docketed on the criminal docket) in a circuit court tried *de novo* and becomes, in effect, a case at law or a criminal case

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and subject to the fair trial tax. The practical effect is to eliminate the tax in those municipal court cases where the offense is a violation of only a municipal ordinance and the case is not thereafter appealed.

If I may be of any further assistance please let me know.

Very truly yours,

**WILLIAM J. BAXLEY**  
Attorney General



## I N D E X

**QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE  
PERIOD FROM OCTOBER 1, 1971, THROUGH DECEMBER 31, 1971**

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## I N F O R M A L   O P I N I O N S

During the period covered by this Quarterly Report of the Attorney General, October 1, 1971, through December 31, 1971, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

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| <b>COUNTIES</b>                    |                      |         |          |
| Bonds—Premiums                     | Joe Fine             | Oct. 13 | 15       |
| City Water System                  | Fred H. Davis        | Oct. 30 | 22       |
| Commission—Motor Vehicle Laws      | Conrad M. Fowler     | Oct. 27 | 30       |
| Costs and Fees—Mobile General Fund | W. Elsworth Haughton | Nov. 3  | 45       |
| Expenses—Director of Hospital      | James D. Hallmark    | Oct. 6  | 2        |
| Expenses—1969 Act                  | Elwood Rutledge      | Nov. 12 | 59       |
| Hospital—Insurance Premium         | Broox Garrett        | Oct. 14 | 17       |
| Idle Equipment—Compensation        | Alton L. Turner      | Nov. 1  | 38       |
| Librarian—Employed by Presiding    | Joseph Hocklander    | Oct. 20 | 13       |
| Mobile Personnel Board             | Mylan R. Engel       | Dec. 7  | 123      |
| Pay—Jurors and Bailiff             | B. J. Moody          | Nov. 15 | 50       |
| Resignation of County Engineer     | C. E. Burleson       | Oct. 22 | 21       |
| Retirement Contributions—Refund    | Henry Rand           | Nov. 23 | 66       |
| Rewards—Authority to post          | James S. Satterfield | Dec. 1  | 77       |
| Salaries—Judges                    | C. E. Burleson       | Dec. 3  | 21       |
| Sheriff's Responsibility           | Mel Bailey           | Nov. 9  | 41       |
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| Constables—Powers                                                     | George E. Little       | Dec. 14 | 104               |
| Court Costs—St. Clair County                                          | Vernon D. Sollie       | Nov. 8  | 56                |
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| Divorce Decree                                                        | Clyde M. Love          | Oct. 22 | 27                |
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| Penalty—Game, Fish and Fur Bearing Regulations                        | William E. Lumpkin     | Nov. 29 | 78                |
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| Statutes—Contraband Property                                          | J. Kyser Leonard       | Nov. 8  | 51                |
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| Coroner—Blood Sample from Dead Body                                   | Mike Moebes            | Dec. 22 | District Attorney |
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| Game Warden—Game Laws                                                 | Robert Hill            | Dec. 9  | 88                |
| Law Enforcement Officers—Travel                                       | Robert Hill            | Dec. 9  | 88                |
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| City Employees—Situa of Employment      | Ben Stokes              | Nov. 19 | 73            |
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| Board—Winston County—Salary Allowance   | B. M. Bailey             | Dec. 13 | 93               |
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| City Board—Labor Union                  | Hugh H. Stegall          | Nov. 4  | 54               |
| City Boards—Records                     | Bobby E. Higgins         | Nov. 15 | 58               |
| City and County Boards—Sales Tax Funds  | Thomas W. Carroll        | Nov. 10 | 63               |
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| Counties—Busing                         | Bill Ayers               | Oct. 18 | 19               |
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| Junior College—President                | Charles W. Davis         | Dec. 6  | 90               |
| Livingston—Depository                   | John E. Deloney          | Oct. 26 | Livingston Univ. |
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| Board of Health—Mobile County—Salary and Expenses               | Dr. Ira L. Myers      | Nov. 15 | Health Dept.     |
| Board Members—Expenses                                          | Octavia Roemer        | Oct. 13 | Health Dept.     |
| Board of Pharmacy—Penalty                                       | Dan A. Dennis, Jr.    | Dec. 29 | Pharmacy Board   |
| Conservation Dept.—Legal Bids                                   | Claude D. Kelley      | Oct. 8  | Conserv. Dept.   |
| Convict Guards—Peace Officers                                   | B. G. Bryant          | Dec. 6  | APOABF           |
| Council of Arts—Minutes                                         | M. J. Zakrsewski      | Dec. 1  | 95               |
| County Jail and Penal Institution—Difference                    | L. B. Sullivan        | Nov. 5  | Board of Corr.   |
| Dental Service—State Board Awards                               | Dr. C. Eugene Brown   | Oct. 8  | 4                |
| Director of Agriculture and Industries—Increased Oil Inspection | Richard Beard         | Dec. 9  | Agri. & Indus.   |
| Director's Salary—Educational Study Comm.                       | Otto E. Simon         | Dec. 20 | 99               |
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| General Contractors Discussed                                   | Murray W. Beasley     | Oct. 29 |                  |
| Historical Commission—Appropriation                             | W. Warner Floyd       | Dec. 10 | Historical Comm. |
| Industrial Relations Dept.—Job Corps Candidate                  | Tom J. Ventress       | Dec. 28 | Indus. Relations |
| Labor Union—Records                                             | Howard E. Hendrix     | Dec. 11 | Dept. of Labor   |
| Last Salary Check—Widow                                         | J. O. McCollough      | Oct. 6  | 9                |
| License Fees—Billiard and Pool Tables                           | Charles A. Boswell    | Nov. 12 | Revenue Dept.    |

| Subject                                   | Addressee            | Date    | File No.                   |
|-------------------------------------------|----------------------|---------|----------------------------|
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| Mobile Tunnel—Supp. Agreement             | Guerry Pruett        | Nov. 29 | Highway Dept.              |
| Permits—Blind Persons                     | Roland H. Teel       | Oct. 1  | 24                         |
| Physician—Inmate Status                   | William H. Chambliss | Oct. 29 | 29                         |
| Planning Commission—Approved              | R. C. "Red" Bamberg  | Oct. 22 | Ala. Dev. Office           |
| Retired Employees—Status                  | Walker L. Allen      | Oct. 22 | Public Safety              |
| Retirement Board—Refund                   | Octavien Roemer      | Oct. 12 | APO Annuity & Benefit Fund |
| Treasurer and Commissioner of Agriculture |                      |         |                            |
| —Expenses                                 | Agnes Baggett        | Dec. 8  | State Treasurer            |
| Veterans Affairs Dept.—Vital Statistics   | Walker C. Head, Jr.  | Oct. 6  | Veterans Affairs           |
| Wage Price Freeze—Public Safety Dept.     | Walter L. Allen      | Nov. 9  | Public Safety              |
| <b>SUNDAYS—STORES</b>                     |                      |         |                            |
| Discount Store—Tit. 140, Sec. 420         | A. D. McNess         | Dec. 28 | 156                        |
| <b>TAXATION</b>                           |                      |         |                            |
| Delinquent—Corporations                   | Ralph W. Havard      | Dec. 13 | 106                        |
| Ad Valorem Tax—Order of Moose             | Davis R. Gamble      | Dec. 4  | 126                        |
| Indebtedness—Mortgage Tax                 | John M. Puryear      | Oct. 6  | 36                         |
| Montgomery March of Dimes—Tax Exemption   | Walker Hobbie, Jr.   | Nov. 12 | 71                         |
| Office Equipment—Ad Valorem—Depreciation  | Roy C. Baxter        | Dec. 7  | 96                         |
| Real Estate—Tax Assessment                | Roy C. Baxter        | Dec. 9  | 96                         |
| <b>TEACHERS</b>                           |                      |         |                            |
| Supervisory Position—Tenure               | John R. Hargis       | Dec. 30 | 146                        |